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RIGHTS OF THE CHILD

Report of the Working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts on its fourth session

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Introduction

1. The Commission on Human Rights, in paragraph 14 of its resolution 1997/78, requested the working group on a draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts to meet for a period of two weeks, or less if possible, prior to the fifty-fourth session of the Commission, in order to finalize the draft optional protocol.

2. The Economic and Social Council, in its decision 1997/281, approved the Commission's request.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The fourth session of the working group was opened by the representative of the Office of the High Commissioner for Human Rights, who made a statement. During the session the working group held seven plenary meetings from 2 to 10 February and on 19 March 1998. The working group adopted its report on 19 March 1998.

B. Election of the Chairman-Rapporteur

4. At its 1st meeting, on 2 February 1998, the working group elected Mr. Nils Eliasson (Sweden) Chairman-Rapporteur.

C. Participation

5. The representatives of the following States members of the Commission attended the meetings of the working group, which were open to all members of the Commission: Argentina, Austria, Brazil, Canada, Chile, China, Cuba, Czech Republic, Denmark, El Salvador, France, Germany, Guatemala, India, Ireland, Italy, Japan, Malaysia, Mexico, Morocco, Pakistan, Peru, Philippines, Poland, Republic of Korea, Russian Federation, South Africa, Sri Lanka, Sudan, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

6. The following States, non-members of the Commission, were represented by observers: Algeria, Australia, Bahrain, Belgium, Colombia, Costa Rica, Dominican Republic, Egypt, Ethiopia, Estonia, Finland, Iran (Islamic Republic of), Netherlands, New Zealand, Nigeria, Norway, Portugal, Romania, Slovakia, Spain, Sweden, Syrian Arab Republic, Thailand, Turkey.

7. The following non-member States of the United Nations were also represented by observers: Holy See, Switzerland.

8. The following United Nations bodies were represented by observers: United Nations Children's Fund (UNICEF) and the Office of the United Nations High Commissioner for Refugees (UNHCR).

9. The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies were also represented by observers.

10. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers: Amnesty International, Associated Country Women of the World, Coalition against Trafficking in Women, Friends World Committee for Consultation (Quakers), Human Rights Watch, International Council of Women, International Federation of Social Workers, International Federation Terre des Hommes, International Save the Children Alliance, International Service for Human Rights, New Humanity and the World Christian Life Community.

11. The following other non-governmental organizations were represented: ACT Project and Dutch Coalition for the Rights of Children in Armed Conflict.

D. Documentation and organization of work

12. The working group had before it the following documents:

E/CN.4/1998/WG.13/1	Provisional agenda
E/CN.4/1998/WG.13/2 and Add.1-2	Report of the Secretary-General prepared pursuant to paragraph 14 (a) of Commission on Human Rights resolution 1997/78: comments on the report of the working group
E/CN.4/1997/96	Report of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts on its third session

13. The working group adopted its agenda, as contained in document E/CN.4/1998/WG.13/1, at its 1st meeting, on 2 February 1998.

14. At the 2nd meeting, on the proposal of the Chairman-Rapporteur, the working group decided, in order to speed up the drafting process, to continue its work in informal meetings, in the form of open-ended consultations with the Chairman. Such informal sessions, headed by the Chairman, were held from 3 to 9 February 1998.

15. The Chairman-Rapporteur drew the attention of the working group to the informal paper which he had offered to the Commission on Human Rights in April 1997 when introducing the report of the Working Group on its third session and which contained his perception of the draft optional protocol. This paper was subsequently circulated among delegations and served as one of the bases for informal open-ended consultations conducted by the Chairman, in the course of which it was partly revised. It was agreed to annex to the report of the working group the revised version of his paper entitled "Chairman's perception".

II. GENERAL DISCUSSION

16. At its 1st, 2nd and 3rd meetings, on 2 to 4 February 1998, the working group, at the invitation of the Chairman-Rapporteur, held a general discussion on questions relating to the draft optional protocol. The topics discussed included the question of the minimum age of persons participating in hostilities, the issue of direct or indirect involvement in hostilities, the age of recruitment, be it voluntary or compulsory, into the armed forces, and whether or not a clause should be included in the draft optional protocol preventing child recruitment by non-governmental armed groups.

17. Several representatives of non-governmental organizations appealed to the working group to assume fully the serious responsibility to help bring to an end the deplorable practice of the use of children in combat through setting a clear minimum age of 18 years for all forms of recruitment into the armed forces and for participation in hostilities. It was pointed out that in recent years the involvement of children in many armed conflicts had continued unabated and even increased as conflicts were prolonged, economies collapsed, and light weapons proliferated.

18. Many of the speakers also emphasized that the working group was expected and requested to set clear, workable standards which can have a real impact in addressing the problem of preventing children from being recruited and used in combat. It was stated that the time had come to demonstrate international solidarity on behalf of children in armed conflicts. This required the adoption of a multitude of measures and a strong political will to make them work. The drafting of the protocol was one such measure.

19. The participants agreed that the key issue of the draft optional protocol was that of the age limit for participation in hostilities. The vast majority of delegations expressed their support for a clearly designated limit of 18 years for participation (see paragraph 75 below), with most of them favouring this limit being applied to all forms of participation, either direct or indirect. It was pointed out that establishing 18 as the minimum age would be consistent with the general age of majority under the Convention on the Rights of the Child, as well as in most national legislations.

20. An appeal was made to States that were not yet in a position to accept the 18-year age limit not to prevent its adoption by other Governments. The optional character of the proposed protocol was again emphasized in this connection, and it was pointed out that the future instrument would have no binding consequences on countries which chose not to ratify it.

21. Several delegations indicated their readiness to join consensus despite many domestic legal problems which would have to be overcome.

22. The opinion was expressed by several delegations that new standards, in order to be enforceable, should enjoy the support of the vast majority of States. From that point of view, the establishment of an 18-years age limit could not be considered as a practical and practicable proposal acceptable to all. It was argued that the real problem lay not in the debate about the higher standard but in the lack of implementation of existing standards, which would eliminate the real problem - the involvement of those under 15 in armed

conflict. It was suggested that, in order to set an achievable goal and to attract the maximum number of States willing to adhere to the protocol, the working group should designate 17 years as the minimum age for participating in hostilities. This view was shared by several delegations.

23. A fundamental difference among States on the question of the minimum age for participation in hostilities was therefore noted by the working group.

24. Most speakers believed that all participation, whether direct or indirect, should be prohibited. They considered that the inclusion of the word "direct" would weaken the very core of the protocol, since under such a formulation children could still be found in war zones performing hazardous duties that placed them at great risk. Other participants held that a specific reference in the protocol to "direct" participation was necessary.

25. While some delegations expressed their readiness to look for solutions which enjoyed the broadest possible support, they felt that the working group should not accept an unsatisfactory solution only for the sake of compromise. The purpose of the working group, it was reiterated, was to provide improved and higher international standards for protecting children.

26. A certain illogic was noted by some speakers in the approach of those Governments which, while recruiting and deploying children under 18 years of age as soldiers, banned the sale of alcohol and tobacco to them, or prohibited their employment in those spheres of industry which were likely to jeopardize their health or safety.

27. It was strongly stated by some participants that preventing recruitment of children would prevent their participation in hostilities. They opposed the idea of focusing only on participation and leaving the question of recruitment aside, which they considered the equivalent of a ban on the use of landmines while permitting their continued production. It was felt that recruitment was precisely the point at which it was most feasible to attack the problem of preventing the involvement of children in armed conflicts.

28. Many speakers considered that what was called voluntary recruitment was in fact, in very many cases, not a free choice but the result of indoctrination, incitement to vengeance, poverty, destitution, severe pressure, the prospect of physical protection, or simply immaturity. It was therefore strongly felt by many participants that the minimum age for recruitment into the armed forces in all circumstances should be set at 18 years and without any distinction being applied between compulsory and voluntary recruitment and regardless of parental consent. The opinion was expressed that the requirement of parental consent was not a safeguard and was irrelevant in many situations.

29. It was also pointed out in that connection that monitoring and enforcement would be difficult if the age limit were different for participation and for recruitment. The age should therefore be 18 for both situations.

30. Other participants believed that the minimum age for voluntary recruitment into the armed forces should be set at 17 since that was already

the practice in many countries. It was also stated that the imposition of an 18-years age limit for any recruitment would undermine an important accessory purpose of military service, which is educating young people. In many countries, the function of military service is not limited to defence: it also gives young people an opportunity to acquire knowledge and skills which they would be able to utilize afterwards. It was felt setting a higher age limit for recruitment would limit access to further education by young people who lacked the financial means to continue their schooling.

31. It was pointed out in that connection that acceptance of the 18-years age limit for participation in hostilities and recruitment into the armed forces would not prevent persons under 18 from entering military schools. It would, however, prevent schools from being used as an excuse or cover for the participation of children under 18 in hostilities.

32. Most delegations believed that the protocol should reflect the reality of the situation in the world today, where most armed conflicts take place within States and most under-age combatants serve in non-governmental armed groups. The future protocol should therefore also address, in its operative part, the situation of child soldiers recruited by non-governmental entities.

33. According to another view, the protocol should not imply recognition of non-governmental armed groups. A preference was voiced for this issue to be addressed in the preambular part of the document only.

34. Some NGO participants, when outlining the context of the use of children in armed conflict as experienced by their organizations, referred to the particular vulnerability of displaced children, especially when they were separated from their families. It was pointed out that refugee camps sometimes became centres for forcible recruitment of child soldiers. Feeling unsafe and left to their own devices, some refugee children have reportedly volunteered to join armed groups hoping to find there physical protection and economic security.

35. It was also stated that the problem of child soldiers was not a merely military or patriotic issue, but also a matter of exploitation and poverty. Reference was made to reports which clearly show that, irrespective of the method of recruitment, child soldiers very often come from the poor and disadvantaged groups of society with lower educational prospects or from groups with disrupted or non-existent family backgrounds. Furthermore, it was pointed out that child soldiers were not all boys; there were also girls. In addition to being involved in combat and suffering the same treatment as boys, girl soldiers were very much at risk of sexual violence and exploitation, AIDS and unwanted pregnancy.

36. The social cost of child soldiers was very high. These children were not gaining an education, skills, or any knowledge that they would normally acquire by staying with their families. Instead, they learned how to use a gun. One of the negative results of the phenomenon of child soldiers had been an increase in armed robberies in the affected societies.

37. At the 4th meeting, on 5 February 1998, the Chairman read out a message from Mr. Olara Otunnu, Special Representative of the Secretary-General for

children in armed conflict. Mr. Otunnu strongly supported the proposal to raise the minimum age for recruitment into armed forces or armed groups, and participation in combat to 18. He considered that an optional protocol, adopted by consensus, would send a very important and much needed message concerning the protection of the rights and welfare of children in situations of armed conflict, and urged all delegations participating in the working group to join in that consensus.

38. At the 5th meeting, on 9 February 1998, the United Nations High Commissioner for Human Rights, Mrs. Mary Robinson, addressed the working group. The High Commissioner noted the growing consensus for setting the minimum age for all forms of participation in hostilities at 18 and welcomed the fact that some delegations had indicated their readiness to adjust their positions. She supported the views of those participants who considered that the working group should provide improved and higher international standards and that national legislation should not be presented as an obstacle to the elaboration of more advanced international standards, especially bearing in mind the optional character of the proposed protocol. Finally, the High Commissioner expressed the hope that those Governments which were still reluctant to accept a minimum age of 18 would reconsider their position.

Particular views expressed by some delegations

39. The delegation of Ethiopia reiterated its strong support for an optional protocol to the Convention on the Rights of the Child that would prohibit the participation of children under the age of 18 in armed conflicts, without qualifying the nature of that participation. While compulsory recruitment should be totally abolished, the age limit for voluntary recruitment into the armed forces should be set at 18. The prohibition on participation and recruitment should also apply to parties to a non-international armed conflict. The obligation to ensure compliance with the instrument should rest with the States Parties. Since the optional protocol had a very specific purpose and objective, no reservations should be admissible. The delegation's support for significant improvements in the standards of protection for children was based on its experience of the protracted civil war that devastated the country until 1991.

40. With regard to the paper entitled "Chairman's perception", the representative of Pakistan stated that in article 2, paragraph 2, her delegation would like the age of voluntary recruitment to be kept at 16. Sixteen-year-olds voluntarily entered the armed forces in Pakistan because of the job stability, training and educational opportunities offered to them, providing in some cases a livelihood for themselves and their families. Lowering the age could cause severe social dislocation for individuals and families. Her delegation would also favour the retention of article 2, paragraph 3, as it covered educational and vocational training schools run by the military. The delegation of Pakistan did not consider article 3 to be relevant to this protocol as it raised some issues of legality and legal jurisdiction. But in view of the sad reality of children being used in some conflicts, it agreed to accept language on the use of children by armed groups. However, the delegation insisted and would continue to insist that in any document on armed conflict it was essential that there be explicit mention

of peoples' right to self-determination and their right to use all legitimate means to fight foreign occupation and alien domination. To this end, her delegation offered the following language of article 3, paragraph 3:

> "The application of the present provisions under the protocol shall be without prejudice to the struggle of peoples fighting for their right to self-determination and against foreign occupation and alien domination".

When it was firmly stated by some delegations that a direct reference in the operative part to self-determination, foreign occupation and alien domination would not be acceptable, the delegation of Pakistan offered the following language:

> "The application of the present provisions of the protocol is without prejudice to the rights and obligations of peoples flowing from the principles of the Charter of the United Nations and international humanitarian law".

On the understanding that reference to the concept of self-determination would be acceptable only in the preamble, the delegation of Pakistan offered the following two paragraphs from General Assembly resolution 2649 (XXV) of 30 November 1970, to be inserted in the preamble as a compromise:

> "Affirming the legitimacy of the struggle of peoples under colonial and alien domination recognized as being entitled to the right to self-determination to restore to themselves that right by any means at their disposal,
>
> "Recognizing the rights of peoples under colonial and alien domination in the legitimate exercise of their right to self-determination to seek and receive all kinds of moral and material assistance in accordance with the resolutions of the United Nations and the spirit of the Charter of the United Nations."

Since this was again found unacceptable by several delegations, the delegation of Pakistan thought that consensus could be emerging on the following language:

> "Recognizing the rights of peoples under colonial and alien domination in the legitimate right to self-determination in accordance with the Charter of the United Nations and in view of the special needs of the protection of children in armed conflicts."

As this was opposed by some delegations, the delegation of Pakistan agreed to work on compromise language based partially on the language of the Charter as follows:

> "Recalling the provisions in the Charter of the United Nations concerning equal rights and self-determination of peoples, peaceful settlement of disputes and the duty of Member States to refrain in their

international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner, inconsistent with the purposes of the United Nations".

The delegation of Pakistan expressed regret that such language was also not acceptable to some delegations and that its concessions were not met with corresponding gestures: each time it tried to bridge the gap, there was no political will to take into account the legitimate concerns of the delegation. It therefore requested that the eighth preambular paragraph in the "Chairman's perception" paper to be placed in square brackets for further discussions.

The representative of Pakistan felt that further discussions were also required on a number of outstanding issues and proposed that the working group should strongly recommend to the Commission on Human Rights to authorize another session so the working group could achieve consensus. In her view, legal obligations could not be entered into by States on the basis of the "Chairman's perception" but only on the basis of a negotiated consensus text. Since the "Chairman's pereception" was only his, the paper could not be annexed to the report of the working group.

41. The delegation of Switzerland welcomed the "Chairman's perception" paper annexed to the report of the working group. In view of that document, which would constitute a reference tool for the future work of the group, the Swiss delegation wished once again to state its position on the basic issues addressed by the working group:

(a) The optional protocol was to fill a gap in the Convention on the Rights of the Child and should establish an age limit of 18 years for the participation of children in hostilities. The distinction between direct and indirect participation in hostilities should be rejected;

(b) With regard to voluntary recruitment for regular troops, the age limit should be 18 years;

(c) In the event that the optional protocol included an exception to the rule covering voluntary recruitment for purposes of education and vocational training in establishments operated by or under the control of the armed forces, particular attention should be paid to the implementation of that exception, in order to prevent it from allowing any circumvention of the principle of the established age limit of 18 years;

(d) It was essential that the optional protocol should contain a provision prohibiting the recruitment of children under the age of 18 by groups of combatants which were not part of the regular armed forces.

42. The representative of Japan stated that under the Constitution of his country, Japanese people forever renounced war as a sovereign right of the nation and expressed the desire for peace at all times. This desire for peace specified in the Constitution of Japan went beyond its borders. In particular, the Japanese people recognized that all peoples of the world had the right to live in peace, free from fear and want. In that respect, the Government of Japan was seriously concerned at the effects that armed conflicts had on children in many parts of the world. It was deplorable that

innocent children had been increasingly involved in such conflicts and sometimes used as soldiers. After hearing very impressive statements made by the High Commissioner for Human Rights, specialized agencies and NGOs, the Japanese Government's conviction that the problem must be addressed had been strengthened. The delegation supported the working group and hoped for the early adoption of the optional protocol. Strong support was also expressed for the "Chairman's perception" paper, and for Japan article 2, paragraph 3, was indispensable. Although the perception paper was not satisfactory for all the participants, it was the only solution if the optional protocol was to be adopted at an early stage. Finally, the delegation of Japan expressed its gratitude to the Chairman-Rapporteur for his hard work in seeking an agreement.

43. The representative of Denmark expressed the support of his delegation for the age limit of 18 years for any form of participation in hostilities. His delegation also favoured the 18-years age limit for compulsory recruitment and indicated that it would be able to join consensus on 18 years also for voluntary recruitment. It was of utmost importance that the optional protocol also address the issue of recruitment by armed groups other than governmental forces. While opposing, as a matter of principle, the possibility of reservations to the optional protocol, Denmark would, for the sake of compromise, go along with article 5 of the "Chairman's perception" paper. Similarly, although the delegation of Denmark would prefer slightly different wording in some of the articles of the perception paper, it would be ready to accept the draft optional protocol as presented in the Chairman's paper on the understanding that it was a near-consensus text resulting from a long negotiation process. His delegation would like the perception paper to be annexed to the report of the working group.

44. The observer for Portugal expressed the disappointment of her delegation that no consensus could have been achieved at the present session of the working group. Her delegation supported the "Chairman's perception" text (which should be annexed to the report) as a way to contribute to reaching a consensus. Such a position would, however, constitute a major compromise with regard to those values which should guide the drafting of the protocol, in particular the need to ensure the best interests of the child. The delegation of Portugal would welcome the age limit of 18 years to be set for participation in hostilities, without a distinction being made between direct and indirect participation. Any such distinction would be controversial and subjective, allowing for different interpretations and diminishing the protection of children. It would also constitute a step backwards in relation to existing standards of international humanitarian law, namely those contained in Additional Protocol II to the Geneva Conventions of 1949. Her delegation was also convinced that no reservation to the protocol should be permitted. Being an optional protocol, this instrument should constitute a simple option for States Parties to the Convention on the Rights of the Child that wished to set a higher standard in the protection of children in situations of armed conflict.

45. The observer for Amnesty International stated that his organization was campaigning for the adoption of a draft optional protocol which would include provisions that:

(a) Prohibited persons below 18 years of age from participating in hostilities;

(b) Prohibited the compulsory or voluntary recruitment of persons below 18 years of age into governmental armed forces; and

(c) Prohibited the recruitment of persons below 18 years of age into armed opposition groups.

He pointed out that international law increasingly used the benchmark of 18 years as the age below which special protection should be afforded. The involvement of children in armed forces was not inevitable. The recruitment and participation of children in armed conflicts was always a decision made by Government and/or by leaders of armed opposition groups. While the purpose of this human rights protocol should be to protect children from involvement in armed conflicts, the language used in article 1 only required States Parties to take "feasible measures", and even then only protected persons under 18 years of age who took a "direct part" in hostilities. This could mean that the child soldiers who were not taking a "direct part" in hostilities but who were in the area of armed conflict became legitimate targets for attack. Amnesty International considered that the purpose of new human rights standards was to significantly develop international law and elaborate clear obligations for States. It believed that the standard required of States in this protocol must be no less rigorous than those in other human rights treaties. States must ensure that persons who had not reached 18 and who were members of governmental armed forces did not participate in hostilities. The practice in recent years of drafting standards by consensus had given each Government an opportunity to block action to defend and protect human rights. Drafting groups could become hostage to a few States and were all too often faced with the stark choice of accepting the lowest common denominator or abandoning the drafting exercise. But this need not be the case. Consensus decision-making should no longer be used unquestionably as the working method for standard-setting initiatives. It was true that the balance had to be struck between drafting a text that enough States would ratify and maintaining the highest standard of human rights protection. The majority of States in favour of a strong text should make every effort to persuade the State, or the few States obstructing adoption of a broad consensus text to reconsider their position. One State, or a small minority of States, should not be allowed to undermine a broad international consensus on a strong text, especially when the instrument was optional. Ultimately, in order to avoid the lowest common denominator approach, voting on the text might be necessary. It was the view of Amnesty International that the text currently before the working group did not yet provide the necessary protection for children at risk of participating in hostilities and recruitment into armed forces.

46. The observer for Egypt confirmed the comments of his Government as contained in document E/CN.4/1998/WG.13/2. His delegation thanked the Chairman-Rapporteur for his efforts and expressed the wish that the "Chairman's perception" paper would become an acceptable text for all participants. To achieve this goal, acceptable language should be found to express that the optional protocol was without prejudice to self-determination and that the right to self-determination could not be used to impair the best interests of the child.

47. The representative of Poland welcomed the fact that the overwhelming majority of States and intergovernmental and non-governmental organizations were in favour of an 18-years age limit for participation in hostilities and considered that the same age limit should be set to protect children from recruitment into armed forces. He shared the view expressed by some delegations that national legislation should not be presented as an obstacle to the success of the working group's exercise, especially bearing in mind the optional character of the future protocol. Another issue of importance to his delegation was the implementation mechanism to the protocol, as proposed in "new article D". He believed that the protocol could not work properly without a procedure for verification fixed within it.

48. The representative of Germany expressed disappointment that despite the willingness demonstrated by the great majority of delegations, it had not been possible to arrive at results allowing the Chairman-Rapporteur to formulate his perception of the status of work as being near consensus. This was due to the position of a very small minority of delegations unable to join an emerging near-consensus on practically all contentious issues. Indeed, the perception paper tabled by the Chairman following open-ended consultations reflected positions which were as close as the working group could achieve to reaching consensus. Although the perception paper did not fully reflect Germany's position on all issues, the delegation could have accepted it in its entirety in an effort to clear the way for the adoption of an optional protocol, which should not be postponed any longer. Notwithstanding this, Germany would have preferred a few changes. In article 1, reference to participation should be without the qualification "direct". There should be no place for reservations to the protocol; thus article 5 should be deleted. Germany shared the view of those delegations which had spoken in favour of retaining "new article D" or the concept contained therein (see paragraph 86 below). In view of the inability of the working group to solve the outstanding problems, Germany questioned if there was any ground for the working group to continue its work. With all arguments having been made, there was now a clear need for political decisions. It was up to the Commission on Human Rights to give the required guidance. Germany expressed the hope that another year was not to be lost before an optional protocol would be adopted which would significantly raise the level of the protection of children in armed conflicts.

49. The observer for the Netherlands underlined that the "Chairman's perception" paper constituted the only feasible way to move forward. Official negotiations had resulted in a deadlock. The Commission on Human Rights should now decide what was to be done. Concerning specific articles, he agreed with the core article, article 1. For reasons of coherence with the Convention on the Rights of the Child, the inclusion of the term "a direct part" was necessary. Equally, he was satisfied with article 2 on recruitment, although the phrasing of paragraph 3 created a loophole. The article on recruitment by armed groups was not completely satisfactory, but could stand as a compromise. He was less happy with the article on reservations. In his view, no reservations to an optional protocol should be acceptable. Lastly, the disappearance of "new article D" was to be regretted, as the lack of implementation of the current standards needed correction.

50. The representative of France thanked the Chairman-Rapporteur for the efforts he had made in order to reach a solution and permit the adoption of the draft protocol. The "Chairman's perception" paper appeared to her delegation to represent a basis for an acceptable compromise capable of improving the protection of children in armed conflicts. Her delegation saw only advantages in including it in an annex to the report of the working group.

51. The representative of Cuba interpreted the inclusion of the "Chairman's perception" paper in the report as an element to be taken into account in the future work of the group. She reiterated that the paper in no way reflected all positions and, of course, could not be utilized or invoked in the working group in a way that would prejudice future negotiations. There was no consensus in the working group and, following the rules and procedures, Cuba would therefore take the official text as the basis for work. Regarding the inclusion of non-governmental armed groups, moreover, Cuba reiterated its concern that States would be made to assume responsibility for matters that were beyond their reach. If others considered that type of reference essential, it should remain in the preamble. Furthermore, Cuba restated its view that "new article D" went far beyond the objectives of the protocol. Children in armed conflicts was one of the topics contained in the Convention, but not the only one, and the investment should afford equal attention to all its articles. The "new article D" was unnecessary and lacked a true perspective within the broad content of the Convention and the work of the Committee.

52. The observer for Norway thanked the Chairman-Rapporteur for his efforts to arrive at a consensus and regretted that the working group had not been able to reach an agreement. The "Chairman's perception" paper was in the main acceptable to the delegation of Norway. It would, however, prefer to delete the word "direct" in article 1. Furthermore, his delegation would prefer to retain article 5 and "new article D" and not to have any possibility for reservations in the optional protocol.

53. The representative of Canada thanked the Chairman-Rapporteur for his considerable efforts to make the optional protocol a reality. Although the "Chairman's perception" did not reflect Canada's preferred position on every issue, his delegation believed that it was a very well-balanced text that merited careful reflection beyond the present session of the working group. The delegation of Canada would like to see the full text of the "Chairman's perception" faithfully recorded in the report of the meeting.

54. The observer for Costa Rica expressed his concern at the effects of armed conflicts on persons younger than 18 years. With respect to article 1, he agreed with the proposal to delete the word "direct" and avoid any situation that would impair the physical, mental and educational development of minors under 18 years of age or would in any way jeopardize their rights. With regard to article 2, the delegation of Costa Rica stated that compulsory or voluntary recruitment of minors into armed forces or armed groups whether regular or irregular could not take place below 18 years of age. With respect to article 5, his delegation believed that, since the protocol was optional, no reservations of any type should be allowed. It recognized the immense value of the coming generations and shared the desire not to expose them to

violence at a very early age. His delegation considered it highly useful for the document resulting from the informal consultations to be annexed to the report that the Chairman would present at the session of the Commission on Human Rights in due course.

55. The observer for Australia expressed the regret of his delegation that no consensus had been reached by the working group during its fourth session. The delegation appreciated the efforts of the Chairman-Rapporteur and believed that his perception paper adequately reflected the outcome of the informal consultations and the progress made at the session, even though it did not meet all the interests of the delegation of Australia. In particular, his delegation did not support a broad exception for military schools. It also considered that no reservations to the protocol should be permitted. Nevertheless, the delegation of Australia strongly supported the annexing of the "Chairman's perception" paper to the report of the working group and considered that the paper could be the basis of future work on the draft optional protocol.

56. The representative of Guatemala wished to express his gratitude to the Chairman for the efforts made to achieve progress in the working group; the adoption of a protocol that would require States Parties to take the necessary measures to prevent the participation of children in armed conflict constituted a very valuable and essential contribution to international human rights norms aimed at putting an end to that practice. The delegation of Guatemala believed that insufficient progress had been made, despite the efforts of various delegations. The participation of children under 18 in conflicts or their recruitment into armies or non-governmental armed groups was unacceptable from any human rights perspective, even in the event that the children concerned enlisted voluntarily. Finally, his delegation hoped that a way forward could be found from the impasse existing in the working group, and if an annex II to the report, entitled "Chairman's perception", could help in finding the way, his delegation would be prepared to consider that solution.

57. The delegation of Colombia believed that it was essential that the draft protocol should be supported and inspired, inter alia, by the close linkage currently recognized between human rights and international humanitarian law, which were to be seen not as separate compartments but as a universe, a whole in which the prime subject was the human person. In that context, the essential obligations which emanated from the draft, namely the prohibition of the recruitment of children and the prevention of their participation in hostilities, should not only be assumed by States but should also be extended to all parties involved in an armed conflict. In the same way, his delegation believed that recruitment of minors under 18 years of age should be prohibited, regardless of whether their participation in conflicts was direct or indirect. It was also in favour of a provision requiring States to classify that type of recruitment as an offence under their criminal law.

58. The representative of India stated that recruitment into armed forces began in his country from the age of 16. All recruits underwent training for a minimum of at least two-and-a-half years. His delegation had no difficulty with 18 years as the limit for participation in hostilities. There was no compulsory recruitment in India. Discussion was going on within the Government about the possibility of raising the age limit for voluntary

recruitment from 16. The position of his delegation was that the national situation concerning the matter should not prevent the setting of a higher standard which would be in the best interests of children across the world. The delegation of India believed that this was an important exercise with a noble goal and shared the disappointment over lack of progress.

59. The representative of Venezuela first expressed his interest in the swiftest possible approval of the additional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts. Secondly he wished to state the position of Venezuela with regard to the articles of the draft protocol discussed at the session which was concluding. Concerning article 1, his delegation believed that it was essential to establish the minimum age of 18 years for participation in any type of hostilities; furthermore, it would prefer the deletion of the word "direct" in the definition of the type of participation in armed conflicts that would fall within the scope of that article. With respect to article 2, paragraph 2, his delegation believed that military recruitment should in no case be conducted before the age of 18 years. With regard to article 3, concerning the recruitment of persons by armed groups distinct from the armed forces of the State, he considered the wording contained in the "Chairman's perception" paper to be acceptable. As for article 5, his delegation was against any form of reservation to the optional protocol because, like other delegations, it believed that such reservations were not appropriate in an instrument whose acceptance by States was in fact discretionary. On more than one occasion, "realism" had been invoked in that scenario as an argument for restricting the protection of human rights in general, and of the rights contained in the additional protocol in particular. His point of view was the opposite: the goal of human rights standards, and of humanitarian law as well, was to change the negative aspects of reality for the better. Fortunately, such change was being achieved, although gradually and by degrees, through at least 50 years of effort. Finally, he wished to commend the efforts by the Chairman to guide the discussions towards the necessary consensus, whose final expression, as far as the current session was concerned was represented by the "Chairman's perception" paper. His delegation considered that document to be positive as a whole, and a very good basis for the future work of the group, and requested that it should be included in the report of the current session.

60. The observer for Sweden expressed disappointment that the working group had been unable to reach an agreement on the key issues of the draft optional protocol. Sweden was in favour of an 18-year age limit for participation in hostilities. It also had a similar position on the issue of recruitment, recognizing the linkage between articles 1 and 2.

61. The observer for Finland confirmed the support of his delegation for the age limit of 18 years for any type of recruitment and participation by children in armed conflicts. No reservations to the protocol should be allowed. Although the "Chairman's perception" paper was not perfect, it seemed to reflect a near-consensus and should therefore be annexed to the report of the working group.

62. The representative of the United Kingdom of Great Britain and Northern Ireland expressed disappointment that it had not been possible to reach a consensus on the text of the draft optional protocol, despite the

strenuous and comprehensive efforts made by the Chairman-Rapporteur. In particular, although the "Chairman's perception" paper did not fully reflect his delegation's preferences in a few important aspects, the United Kingdom would not have blocked the consensus on the terms set out in this paper, and thus would wish to see it annexed to the report of the working group. Nonetheless, he would have preferred to see the age "17" appear in article 1 and the age "16" appear in paragraph 2 of article 2. Moreover, he would also have preferred the text which appeared in the annex of last year's report as "new article A", rather than the text which appears in article 3 of the "Chairman's perception" paper.

63. The delegation of Belgium regretted that a minority of Governments appeared to lack the political will to make progress in the development of clear standards. Belgium accepted only a minimum age of 18 for (a) direct or indirect involvement in hostilities; (b) voluntary or involuntary recruitment both by the armed forces and by non-governmental armed groups. Given that the "Chairman's perception" seemed to be a near-consensus, it was necessary to include it as an annex to the report, for the purposes of future work.

64. The representative of the Russian Federation confirmed the position of his delegation in favour of an 18-years age limit for both recruitment and participation in hostilities. He expressed disappointment at the slow progress in the work on the draft optional protocol. In the view of his delegation, there was a need for additional legal devices which could ensure the best protection of the interests of the child and which would reflect both the practice and the reality. In this connection, the representative of the Russian Federation drew the attention of the working group to the new article (final provisions) proposed by his delegation which read as follows:

> "Nothing in this Protocol shall be invoked to circumvent, to deny or to impair the best interests of the child."

65. The representative of the United States of America expressed disappointment with the outcome of the session. After four years, there was still no consensus on any of the five key issues under negotiation. He noted that a significant minority (at least six of the participating countries) favoured 17 for the age on participation, which was not insignificant given the relatively small number of participants in the negotiations. He noted that there was no consensus on the use of "direct", the age of enlistment, military schools, or organized armed groups, and could not agree to any characterization of the Chairman's text as reflecting a consensus or near-consensus on any issue. He noted that there remained a deadlock on most key issues. He indicated that the working group should be focusing on where there was agreement, not on where there was disagreement. He noted that there was in fact a consensus on banning participation by 16-year-olds and those under 17, as well as recruitment of those under 17. He expressed regret that for many, no agreement was acceptable unless 18 was the age, and this "all or nothing" approach was unfortunate. He urged all concerned to support an agreement that reflected what was in fact a real consensus, which would extend current treaty standards by two years and which would constitute progress.

Finally, he noted that the protocol did not address the sad reality that the existing treaty prohibitions banning the use of 15-year-olds were not respected and that adopting even higher standards under those circumstances was not likely to increase respect for international norms.

66. The representative of the Czech Republic stated that his Government supported all the efforts leading to the adoption of the draft optional protocol ensuring the highest possible standards of protection of the rights of the child. His delegation regretted that the current session of the working group could not reach consensus. Bearing in mind that consensus seemed rather distant under the current circumstances, and in view of the chance to reach near-consensus, it was of the opinion that the extension of the mandate of the working group for one year should be considered. However, if there was a chance of concluding the work of the working group during the fifty-fourth session of the Commission on Human Rights, the Czech Republic was prepared to do its best to contribute to such conclusion. In that regard, his delegation appreciated the enormous effort of the Chairman-Rapporteur and welcomed his paper, which should be part of the report and represented a very good basis for near-consensus. The Czech Republic remained open to any consideration leading to a consensual text. However, the delegation wished to underline its opinions as reflected in the respective paragraphs of the report.

III. PROPOSALS CONCERNING THE DRAFT OPTIONAL PROTOCOL

A. Preamble

67. During the plenary meetings of the working group, no formal proposals concerning the text of the preamble were submitted. A discussion of several issues relating to the preamble was pursued during informal meetings with some proposals being submitted. The text of the preamble remained unchanged (see annex I).

B. Article 1

68. At the 1st meeting, on 2 February 1998, the working group began its consideration of article 1 of the draft optional protocol as contained in the annex to document E/CN.4/1997/96.

69. The representative of the United States indicated that the option [18] was not acceptable to his delegation. That position was subsequently shared by the representative of the Republic of Korea and the observer for Kuwait. All other speakers were in favour of or ready to accept the "18" years option.

70. In view of the absence of agreement, the Chairman-Rapporteur proposed to move to the consideration of other articles.

C. Article 2

71. At its 1st meeting, on 2 February 1998, the working group began its consideration of article 2, as contained in the annex to document E/CN.4/1997/96.

72. The Chairman-Rapporteur suggested that the working group should concentrate on paragraph 2 of article 2 which still contained several options in brackets, and subsequently to discuss paragraph 4 in informal meetings.

73. Concerning the three options of age limit for voluntary recruitment in paragraph 2, various delegations expressed their preferences as follows:

(a) The representatives of the United Kingdom and Pakistan indicated that whilst their delegations retained a preference for the "16" years option, they would not block an emerging consensus on "17" years. The "16" years option was also supported by the observer for the Islamic Republic of Iran;

(b) The representatives of Austria, Brazil, Canada, China, Cuba, France, Germany, Italy, the Republic of Korea, South Africa and the United States and the observers for Australia, the Netherlands, New Zealand and Norway spoke in favour of the "17" years option. At the same time, the delegations of Norway, Portugal and Denmark indicated that they could also consider the possibility of accepting the "18" years option;

(c) The representatives of Chile, the Czech Republic, Denmark, El Salvador, Guatemala, Italy, Japan, Morocco, Poland, the Russian Federation, Sri Lanka, Uruguay and Venezuela and the observers for Colombia, Costa Rica, Egypt, Ethiopia, Finland, the Holy See, Slovakia, Sweden, Switzerland and the Syrian Arab Republic indicated their support for the "18" years option. This position was also supported by the observers for UNHCR, UNICEF, ICRC, the International Federation of Red Cross and Red Crescent Societies, the Friends World Committee for Consultations (Quakers), the World Christian Life Community, the International Federation Terre des Hommes, Human Rights Watch, Amnesty International, Save the Children Alliance and New Humanity;

(d) The representative of Cuba expressed her preference for article 2 of the "Chairman's perception" of April 1997, which gave the age of 17 as the only option for recruitment, without making a distinction between voluntary and compulsory recruitment.

74. The text of this article remained unchanged (see annex I).

D. New article A

75. At the 2nd meeting, on 2 February 1998, the working group began its consideration of new article A, as contained in the annex to document E/CN.4/1997/96.

76. The representative of Cuba reiterated the support of her delegation for the proposal of the delegation of China made during the third session of the working group in 1997 that this article should be moved to the preambular part of the optional protocol. This proposal was supported by the representative of China and by the observers for the Islamic Republic of Iran and the Syrian Arab Republic. The proposal was opposed by the representatives of Canada, the Czech Republic, Germany, Mexico, Peru, the United Kingdom, Uruguay and Venezuela and by the observers for Australia, Belgium, Finland, the Netherlands, New Zealand, Norway, Portugal and Slovakia.

77. Consideration of the issues relating to new article A was continued during the informal meetings with several proposals being submitted. In view of the absence of agreement, the text of new article A remained unchanged (see annex I).

E. Article 4

78. At the 2nd meeting, on 2 February 1998, the working group began its consideration of article 4 as contained in the annex to document E/CN.4/1997/96.

79. The representative of Cuba proposed to replace the present text of article 4 by the text contained in the "Chairman's perception" paper reading as follows:

> "No reservation is admissible to article 1 of the present Protocol."

This proposal was supported by the representative of China and by the observer for Egypt. The representative of China further indicated that her delegation could also consider the other options.

80. The representatives of the Czech Republic, Germany, Italy, the Russian Federation, Sri Lanka, Uruguay and Venezuela and the observers for Costa Rica, Ethiopia, Finland, the Netherlands, Norway, Portugal and Slovakia spoke in favour of the first option of article 4.

81. The representatives of Brazil, France, Guatemala, South Africa, the United Kingdom and the United States and the observers for Colombia, the Dominican Republic, New Zealand and the Syrian Arab Republic supported the third option.

82. The observer for the Islamic Republic of Iran, while supporting the third option, proposed the following new wording for this article:

> "States should avoid making reservations incompatible with the object and the purpose of the present Protocol."

83. Consideration of this article was continued during the informal meetings of the working group with some proposals being submitted. The text of the article remained unchanged (see annex I).

F. New article D

84. At the 2nd meeting, on 2 February 1998, the working group considered new article D as contained in the annex to document E/CN.4/1997/96.

85. The representatives of China, Cuba and Peru and the observer for the Syrian Arab Republic considered this article to be unnecessary and proposed its deletion.

86. The representatives of Colombia, the Czech Republic, El Salvador, Germany, Guatemala, Italy, Poland, the Russian Federation, Sri Lanka and Uruguay and the observers for Australia, Belgium, Costa Rica, Finland, the Netherlands, New Zealand, Norway, Portugal, Romania and Slovakia considered that the article or the concepts contained therein should be retained.

87. The observer for Egypt proposed to replace this article by new wording to be added at the end of article 5, reading as follows:

"and clarification of any alleged breach of these provisions."

88. Subsequent to the consideration of new article D by the working group, its text remained unchanged (see annex I).

G. Article 6

89. At its 2nd meeting, on 2 February 1998, the working group considered article 6 of the draft optional protocol, as contained in E/CN.5/1997/96, which read as follows:

"[Article 6]

[The provisions of the present Protocol shall apply to the States Parties in addition to the provisions of the Convention on the Rights of the Child]".

90. The observer for Ethiopia proposed the deletion of the article. The proposal was supported by the representatives of China and Cuba and by the observers for Egypt and the Syrian Arab Republic.

91. The working group agreed to delete article 6 from the draft optional protocol.

Annex I

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection and call for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Considering that to further strengthen the implementation of rights recognized in the Convention on the Rights of the Child, there is a need to increase the protection of children from involvement in armed conflicts,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purpose of that Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention, raising the age of possible recruitment of persons into armed forces and their participation in hostilities, will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting with satisfaction that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended that parties to conflict take every feasible step to ensure that children under the age of 18 years do not take part in hostilities,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Convinced of the need to strengthen international cooperation regarding the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflicts,

Recognizing with grave concern the growing trend towards recruitment, training and use of children in hostilities by armed groups,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that persons who have not attained the age of [18] [17] years do not take [a direct] part in hostilities.

Article 2

1. States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

2. States Parties shall ensure that persons who have not attained the age of [16] [17] [18] years are not voluntarily recruited into their armed forces.

3. States Parties shall ensure that every person who chooses to enlist into their armed forces before reaching the age of 18 does so of his or her own free will and, unless he or she has already attained majority, with the full and informed consent of those legally responsible for him or her.

4. [Paragraph 2 does not apply to education and vocational training in establishments operated by or under the control of the armed forces of the States Parties in keeping with articles 28 and 29 of the Convention on the Rights of the Child.]

New article A

[States Parties shall take all appropriate measures to prevent recruitment of persons under the age of 18 years by non-governmental armed groups involved in hostilities.]

Article 3

Nothing in the present Protocol shall be construed so as to preclude provisions in the law of a State Party or in international instruments and international humanitarian law which are more conducive to the realization of the rights of the child.

Article 4

[No reservation is admissible to the present Protocol.]

OR

[No reservation is admissible to articles ... and ... of the present Protocol.]

OR

[A reservation incompatible with the object and the purpose of the present Protocol shall not be permitted.]

Article 5

The States Parties to the present Protocol shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, information on the measures that they have adopted to give effect to the present Protocol.

New article D

[1. If the Committee receives reliable information which appears to it to contain well-founded indications that recruitment or use of children in hostilities, contrary to the provisions of the present Protocol, is being practised in the territory of a State Party, the Committee may request the observations of the State Party with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may:

(a) Seek further clarification, information or comments from any source, including where applicable the source(s) of the original information;

(b) Hold hearings in order to clarify the situation.

3. The Committee may initiate a confidential inquiry, which may include a visit of its members (2-3) to the territory of the State Party concerned:

(a) Such a visit could take place only with the consent/after the consultation with the State Party concerned;

(b) If an inquiry is made in accordance with the present paragraph the Committee shall cooperate with the State Party concerned.

4. After examining the findings of its inquiry, made in accordance with paragraphs 2 and 3 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or recommendations which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 3, the Committee may decide to include a summary account of the results of the proceedings in its annual report.]

Article 7

1. The present Protocol is open for signature by any State which is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification or open to accession by any State which has ratified or acceded to the Convention. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General of the United Nations in his capacity as the depositary of the Convention and the Protocol shall inform all States Parties to the Convention and all States which have signed the Convention of each instrument of ratification or accession to the Protocol.

Article 8

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 9

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States which have signed the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act which occurs prior to the date at which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

Article 10

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations together with the Convention on the Rights of the Child.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States which have signed the Convention.

Annex II

CHAIRMAN'S PERCEPTION

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection and call for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Considering that to further strengthen the implementation of rights recognized in the Convention on the Rights of the Child, there is a need to increase the protection of children from involvement in armed conflicts,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention, raising the age of possible recruitment of persons into armed forces and their participation in hostilities, will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting with satisfaction that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended that parties to conflict take every feasible step to ensure that children under the age of 18 years do not take part in hostilities,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Recalling the purposes and principles contained in the Charter of the United Nations,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Convinced of the need to strengthen international cooperation regarding the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflicts,

Recognizing with grave concern the growing trend towards recruitment, training and use of children in hostilities by armed groups,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

1. States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

2. States Parties shall not recruit into their armed forces any person who has not attained the age of 17 years.

3. Paragraph 2 does not apply to education and vocational training in schools, including those operated by or under the control of the armed forces of States Parties in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 3

1. Persons under the age of 18 years should not be recruited into armed groups, distinct from the armed forces of a State, which are parties to an armed conflict. States Parties shall take all feasible measures to prevent such recruitment.

2. The application of the present provision under the Protocol shall not affect the legal status of any party to an armed conflict.

Article 4

Nothing in the present Protocol shall be construed so as to preclude provisions in the law of a State Party or in international instruments and international humanitarian law which are more conducive to the realization of the rights of the child.

Article 5

A reservation incompatible with the object and purpose of the present Protocol shall not be permitted.

Article 6

States Parties undertake to make the principles and provisions of the present Protocol widely known, by appropriate and active means, to adults and children alike.

Article 7

The States Parties to the present Protocol shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, information on the measures that they have adopted to give effect to the present Protocol.

Article 8

1. The present Protocol is open for signature by any State which is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification or open to accession by any State which has ratified or acceded to the Convention. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General of the United Nations in his capacity as depositary of the Convention and the Protocol shall inform all States Parties to the Convention and all States which have signed the Convention of each instrument of ratification or accession to the Protocol.

Article 9

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 10

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States which have signed the Convention. Denunciation shall take effect one year after the date or receipt of the notification by the Secretary-General of the United Nations. If, however on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act which occurs prior to the date at which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

Article 11

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States which have signed the Convention.

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RIGHTS OF THE CHILD

Question of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as the basic measures needed for their eradication

Report of the working group on its fourth session

Chairman-Rapporteur: Mr. Iván Mora Godoy (Cuba)

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Introduction

1. The Commission on Human Rights, in paragraph 9 (b) of its resolution 1997/78, requested its open-ended inter-sessional working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography to meet for a period of two weeks, or less if possible, prior to the fifty-fourth session of the Commission to pursue its mandate in order to finalize the draft optional protocol before the tenth anniversary of the Convention on the Rights of the Child.

2. The Economic and Social Council, in its decision 1997/281, authorized the working group to meet for a period of two weeks prior to the fifty-fourth session of the Commission.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The session of the working group was opened by a representative of the High Commissioner for Human Rights, who made a statement. During the session, from 19 to 30 January 1998, the working group held seven meetings in plenary, on 19, 21, 28 and 30 January and 19 March 1998.

B. Election of the Chairman-Rapporteur

4. At its first meeting, on 19 January 1998, the working group re-elected Mr. Iván Mora Godoy (Cuba) Chairman-Rapporteur. At its 7th meeting, on 19 March 1998, Mrs. Laura Dupuy (Uruguay) was designated to replace the Chairman for the purpose of the adoption of the report.

C. Organization of work

5. At the first meeting, on 19 January 1998, the Chairman-Rapporteur recalled that all opinions on the draft optional protocol had already been expressed by the participants at previous sessions of the working group. The reports on their first to third session (E/CN.4/1995/95, E/CN.4/1996/101 and E/CN.4/1997/97) submitted at the Commission on Human Rights reflect these views expressed by the delegations. He therefore proposed that, in order to save time and to be able to favourably respond to the request of the Commission on Human Rights to conclude the drafting of the protocol before the tenth anniversary of the Convention on the Rights of the Child, the working group should avoid reopening a general debate and should concentrate on drafting issues.

6. The Chairman-Rapporteur then proposed that the work be conducted in an informal drafting group and that consideration should first be given to the second part of the annex that refers to the texts which could not be considered at previous sessions due to lack of time. He also stated that, if the working group agreed, some plenary meetings would be held to allow the participants to express their opinions on the texts discussed during the meetings of the informal drafting group.

D. Participation

7. The representatives of the following States members of the Commission attended the meetings of the working group, which were open to all members of the Commission: Argentina, Austria, Bangladesh, Brazil, Canada, Chile, China, Cuba, Czech Republic, Denmark, El Salvador, France, Germany, Guatemala, India, Indonesia, Italy, Japan, Malaysia, Mexico, Morocco, Pakistan, Peru, Philippines, Poland, Russian Federation, South Africa, Sri Lanka, Sudan, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

8. The following States non-members of the Commission were represented by observers: Australia, Belgium, Colombia, Costa Rica, Dominican Republic, Egypt, Estonia, Ethiopia, Finland, Iran (Islamic Republic of), Netherlands, New Zealand, Nigeria, Norway, Portugal, Romania, Slovakia, Sweden, Syrian Arab Republic and Turkey.

9. The following non-member States of the United Nations were also represented by observers: Holy See and Switzerland.

10. The following United Nations body was represented by an observer: United Nations Children's Fund.

11. The following specialized agency was represented by an observer: International Labour Organization.

12. The following intergovernmental organization was represented by an observer: European Commission (European Union).

13. The International Federation of Red Cross and Red Crescent Societies was represented by an observer.

14. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings: International Council of Women, Coalition Against Trafficking in Women, Defence for Children International, International Federation of Human Rights Leagues and International Service for Human Rights.

15. The following other non-governmental organization was represented by an observer: International Inner Wheel.

E. Documentation

16. The working group had before it the following documents:

E/CN.4/1998/WG.14/1	Provisional agenda
E/CN.4/1998/WG.14/2 and Add.1	Comments on the report of the working group - Note of the Secretary-General

E/CN.4/1997/97	Report of the working group on its third session - Question of a draft optional protocol to the Convention on Rights of the Child on the sale of children, child prostitution and child pornography, as well as basic measures needed for their eradication
E/CN.4/1997/95	Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mrs. Ofelia Calcetas-Santos
E/CN.4/Sub.2/1997/11	Report of the Secretary-General on the implementation of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, submitted pursuant to Sub-Commission resolution 1996/12
A/51/385	Letter dated 19 September 1996 from the Permanent Representative of Sweden to the United Nations addressed to the Secretary-General - Annex - Declaration and Agenda for action adopted by the Congress against Commercial Sexual Exploitation of Children, Stockholm, from 27 to 31 August 1996.

II. DISCUSSION ON THE DRAFT OPTIONAL PROTOCOL

17. In accordance with the proposal made by the Chairman-Rapporteur at the first plenary meeting, and after having held an informal drafting group, the working group held a general debate in plenary meetings on 21 and 28 January 1998 to enable delegations to present their views and opinions on the specific provisions discussed in the drafting group. The present chapter reflects the opinions expressed by some delegations on the text of the articles of the draft protocol which were considered in the drafting group.

18. During the discussion, it was clearly recalled that all States reserve the right to reconsider any issue of the draft optional protocol.

19. The observer for the International Labour Organization (ILO) expressed the Organization's continuing interest in discussions of the draft optional protocol given that its mandate covered certain aspects of child labour related to the sale of children, child prostitution and child pornography. She emphasized that ILO conventions and recommendations on child labour covered any form of work performed by a child, including forced labour or where there was no formal employment relationship, such as in the cases of child prostitution and child pornography. She also reaffirmed the aim of the organization to adopt in June 1999 new international labour instruments with new standards focused upon addressing the exploitation of children, including

the use of children in conditions of forced labour or slavery, their employment in dangerous and hazardous work, as well as the sexual exploitation of children for commercial purposes.

20. ILO had prepared a set of proposed conclusions, based on the replies received by member Governments, to a questionnaire on the contents of the new instruments. These proposed conclusions were as follows: a State which ratified the future convention would be required to take measures to secure the immediate suppression of all extreme forms of child labour, including "the use, engagement or offering of a child for prostitution, production of pornography or pornographic performances". The ratifying State should also take all necessary measures to ensure effective enforcement of the convention, "including the provision and application of criminal penalties". A report on the proposed conclusions would be published shortly. In conclusion, the observer emphasized that ILO was particularly interested in the outcome of the working group's work on definitions: these definitions should in fact conform fully to those contained in other international instruments.

21. The observer for the United Nations Children's Fund (UNICEF) reminded the working group of the deep concern of the international community about sexual exploitation and related issues, including contemporary forms of slavery with specific reference to children; she hoped that the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights would give renewed impetus to the protection of the human rights of children.

22. Emphasizing that the Convention on the Rights of the Child was an essential reference on these matters, the observer for UNICEF highlighted several points that were felt to be of particular concern. These points were: firstly, that new provisions to be incorporated in the optional protocol should strengthen and complement the Convention on the Rights of the Child, and not reaffirm existing standards or undermine them. Secondly, the best interests of the child should always be the primary consideration, and efforts should be aimed at preventing vulnerable groups of children from becoming the most common victims of such practices; it was important to acknowledge that gender discrimination could place girls at greater risk of sexual exploitation, and to recognize their specific needs for rehabilitation. Thirdly, child prostitution and pornography were contemporary forms of slavery and the child had a right to protection, in the various forms it could take. Children should be seen as victims and the priority issue was to ensure that criminal sanctions were established to punish individuals and organizations which induced, coerced or used children for any form of sexual exploitation. In addition, adequate programmes ensuring recovery and rehabilitation of the child, as well as compensation measures should be promoted. Furthermore, the observer for UNICEF stressed the need for national legislation to incorporate a provision on the extraterritoriality of these offences.

A. Chapter II: Definitions

23. The working group examined the chapter of the draft optional protocol dealing with the definitions which the informal drafting group could accept.

24. Despite divergent opinions regarding the focus and the scope of the optional protocol, all participants agreed on the urgent need for action to address the questions raised in the draft text. They also insisted on the necessity of having a finalized draft as soon as possible.

25. Some participants felt that the working group was not making enough progress and that differences on definitions could not yet be overcome. They expressed their concern with regard to a further delay in the adoption of the draft optional protocol.

26. However, other participants expressed their appreciation of the positive evolution of the negotiations and noted with satisfaction that the delegations which had initially been opposed to having definitions in the text of the protocol were reconsidering their position and were actively participating in the drafting of these definitions.

1. Sale of children

27. With regard to the definition of the sale of children, the representative of Germany expressed his support for the Dutch proposal as contained in the report of the working group on its third session (E/CN.4/1997/97, annex, Part 1, chapter II [Article 1 ...]) which left the responsibility for the definition of sale of children, child prostitution and child pornography to States parties and because the proposal was more generic. 1/ This was supported by the representative of Japan and the observer for New Zealand. In that regard, the observer for the Netherlands wished to include in the annex to the present report, as a footnote, the alternative proposal of the definition already submitted by her delegation; this definition could be used as an alternative if no consensus were to be reached on the chapter of the draft optional protocol on definitions. However, as other delegations were in favour of including a definition in the optional protocol, the representative of Germany expressed his delegation's preference for the second option for the definition of the sale of children (see the annex to the present report), as a basis for future work. This position was supported by the observer for New Zealand.

28. The representative of Japan proposed that the definition of sale of children should focus on the sale of children for the purpose of sexual exploitation and said that his delegation would rather work on the basis of the second option for the definition of the sale of children. This position was shared by the delegations of Australia, Belgium, Canada, Finland, France, Italy, the Netherlands, Switzerland and the United States of America.

29. The above-mentioned delegations were of the view that a definition with a limited scope would help them to reach a consensus text more rapidly and would result in an instrument with common minimum standards.

30. The observer for Australia outlined the reasons for supporting a narrower scope for the protocol. While acknowledging the seriousness of the

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1/ The text of the Dutch proposal is also reproduced in the annex to the present report as [Article 1 ...] under Part 1, chapter II.

sale of children for non-sexual forms of exploitation (for example, for commercial intercountry adoption or for non-sexual forms of exploitative child labour), the observer indicated that many of these issues had been or were currently being addressed in other international instruments or fora within the United Nations system; these included the International Labour Organization and the World Health Organization. The observer therefore suggested that elaboration of the proposed instrument should be carefully targeted to address the present gap in international standards regarding sexual exploitation of children, thereby ensuring that the protocol was capable of being effectively implemented. In supporting a narrower scope for the protocol, the observer for Australia was not suggesting that other forms of sale were legitimate; in fact, no sale of a child was legitimate. The delegations of Canada, France, Italy, Japan, the Netherlands and New Zealand concurred with this reasoning.

31. The representative of Italy recalled that the question of the exact mandate of the working group and the scope of the optional protocol was not yet solved and that it should be carried out as a priority.

32. The representative of France, although supportive of the second option for the definition of the sale of children, expressed his reservation with regard to defining sale as "buying and selling" and was of the opinion that a better wording could be found. He would prefer the wording used in the first version which referred to "any kind of transaction or illicit transfer". His concerns were supported by the delegations of Australia, Switzerland and the United States of America.

33. The representative of the Russian Federation wished to draw the attention of the working group to the danger of limiting the definition of the sale of children to sexual exploitation and to the fact that, given that articles 34 and 35 of the Convention on the Rights of the Child had been used as a basis for the relevant provisions of the optional protocol, article 35 was not limited in any way to sexual exploitation of children. He also recalled that the mandate of the working group did not limit the concept of the sale of children. This position was supported by the delegations of Argentina, Chile, Colombia, Costa Rica, Cuba, Guatemala and Uruguay. The observer for Costa Rica joined the large group of countries which supported the idea that, to ensure effective legal protection of children, the definition of the sale of children should include the words "for any purpose or in any form". He also considered it to be of the utmost importance that the protocol should contain a definition, inter alia, of sex tourism.

34. The representative of Mexico underlined the complexity of the task of the working group and insisted on the need to focus on the mandate of the group because its work should be guided by the principle of the best interest of the child. She therefore proposed, as a basis for future work, a definition which read as follows: "Sale of children means any kind of transaction where the child is the object, regardless of the form it takes and whether any compensation is involved, for [the purpose of sexual exploitation] [whatever purpose]".

35. The observer for Switzerland thought that this definition could serve as a good working basis for reaching a compromise wording on the sale of children at the next meeting of the working group.

36. The representatives of Argentina, Chile, Cuba, El Salvador, Guatemala and Uruguay and the observers for Colombia, Costa Rica and Egypt also recalled that article 35 of the Convention on the Rights of the Child must be used as the basis for the provisions of the optional protocol. They all expressed the need for the optional protocol to address and to criminalize all acts aiming at the violation of the rights of the child. The definition of the sale of children should, therefore, be as comprehensive and wide as possible. They expressed their preference for the first alternative of the definition of the sale of children as the basis for negotiation at the next session of the working group. The representative of Uruguay was of the view that the definition of the sale of children should also include the question of the person having any custody or control over a child. The observer for Colombia emphasized the inappropriateness of limiting the definition of the sale of children to one purpose or object, not only for the legal reasons given, but also because of the negative message that would be sent to the international community about the real will to safeguard children against these practices.

37. The observer for the Syrian Arab Republic insisted on the need for the protocol to have a clear and concise definition. She then proposed a text which read: "Sale of children means the act which seeks to make the child or any organ or part of the child's body the object of a commercial transaction for any purpose or any form".

38. The representative of China expressed the need for a broad definition of the sale of children which should also include the questions of trafficking and abduction. He was supported by the representatives of Cuba and Uruguay; the former also wished to include the issues of economic exploitation, organ transplant and illegal adoptions. The representative of China was in favour of an optional protocol which would reinforce existing mechanisms and provide better protection to children victims of such practices. He also stated that the time-frame for the adoption of this protocol and the harmonization of national legislation should not be used as a pretext to limit the scope of the optional protocol.

39. The representative of Uruguay felt that the optional protocol should be used in conjunction with other international instruments and mechanisms dealing with the protection of children. By way of example, she referred to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption which, in her opinion, exclusively addressed international adoptions without particular focus on illegal adoptions. The optional protocol, by addressing the question of illegal adoptions, could therefore complement the Hague Convention. She was supported by the delegations of Chile, China and Guatemala.

40. The representatives of Guatemala and Uruguay, supported by the representative of Argentina, wished to include in the present report a summary of the comments that the Special Rapporteur on the sale of children, child prostitution and child pornography had made to the informal drafting group. As such statements had been made in informal meetings, a decision was taken by

the Chairman not to include any reference to her interventions. Interested delegations could always consult the various reports submitted by the Special Rapporteur to both the Commission on Human Rights and the General Assembly.

2. Child prostitution

41. With regard to the definition of child prostitution, the observer for the Syrian Arab Republic proposed the following definition: "Child prostitution means engaging in any unlawful sexual acts with a child, or inciting, or rendering such acts attractive to the child". With regard to the definition contained in the annex, she also suggested the deletion of the square brackets around the word "unlawful" and that the words "sexual services" be replaced by the words "sexual activities" in accordance with the Convention on the Rights of the Child.

42. The representative of Chile proposed the deletion of the word "unlawful", as any sexual service of a child could not be lawful. He was supported by Argentina, Brazil, Canada, China, Costa Rica, Cuba, Egypt, Guatemala, Italy, the Islamic Republic of Iran and Uruguay. The representative of Uruguay recalled that the reference to the national law, in cases where the age of sexual consent was less than 18 years, would pose a problem when persons under 18 engaged in prostitution or pornography. However, the observer for Norway preferred to keep the word in square brackets in order to be consistent with the national legislation of her country. She was supported by the representatives of France and Germany. The representative of Chile also expressed his preference, in respect of the Spanish translation, for the word "compensation" (retribución) instead of "benefit" (beneficio). This opinion was shared by the delegations of Costa Rica and Guatemala. He suggested the deletion of the square brackets around the phrase "including in the context of child sex tourism". This was supported by the delegations of Argentina, Brazil, France, the Islamic Republic of Iran and Switzerland.

43. The observer for New Zealand, supported by the representative of Guatemala, suggested deleting the words "inducing" and "coercing". Her delegation did not have a strong feeling with regard to the word "unlawful" and proposed, in the interest of consensus, to use the wording based on the text of article 35 (a) of the Convention which referred to "unlawful sexual activity". She was supported by the representatives of France and Germany. The observer for Switzerland, while preferring the deletion of the word "unlawful" when referring to sexual services of a child, joined the consensus for the wording based on article 35 (a) of the Convention.

44. The representative of the United Kingdom expressed his delegation's preference for the words "sexual services"; however, he was ready to join the consensus on the wording based on article 35 (a) of the Convention. The representative of Cuba expressed the wish of her delegation to include in the definition the word "activities".

45. The representative of Japan expressed concern about the lack of clarity of words such as "facilitating" and "sexual services". The observer for Switzerland underlined the need to harmonize chapters II (Definitions)

and IV (Penalization) to avoid repetition. In this connection he proposed deleting the word "facilitating", which already appeared in chapter IV.

46. The representative of the United States of America also expressed concern about the words "inducing", "coercing" and "facilitating" given that the related criminal acts were covered by chapter IV. The representative of Italy was not in favour of putting into square brackets the words "obtaining" and "procuring" on which an agreement had been reached at the previous session of the working group.

47. With regard to the issue of child sex tourism, the representative of the United States of America drew the attention of the working group to the redundancy of the phrase "by a person, whether inside or outside that person's country of residence" and the phrase "including in the context of child sex tourism". He suggested the deletion of the former for the sake of consistency. His view was shared by the representatives of Canada, France and Japan. It was agreed to put both phrases into square brackets for further consideration at the next session.

3. Child pornography

48. The working group considered a text proposed jointly by the delegations of Australia and Portugal. All delegations accepted using this text as a basis for their future discussions and to include it in the annex to the present report.

49. The representative of Italy proposed the deletion of the words "for the purposes of commercialization/trading, dissemination or other illicit purpose" and, in the absence of a consensus, to put them between square brackets. "Production" and "possession" should be considered illicit because of the intrinsically illicit nature of the material, irrespective of any specific purpose. She was supported by the representatives of Argentina and El Salvador and by the observer for Switzerland. The representative of Chile expressed his concern with regard to the fact that the current definition did not cover the issue of possession of material. The representative of Canada suggested placing "or other illicit purpose" between square brackets, as a basis for future discussion of the need to address simple possession.

50. The observer for the Syrian Arab Republic proposed inserting after the words "sexual purpose", the phrase "inter alia, encouraging child prostitution, child pornography and child sex tourism". The representative of Cuba suggested replacing the Syrian text with "including in the context of child sex tourism". The representatives of Argentina, Chile and the United States of America, while agreeing on the need to cover international aspects of the practices condemned by the draft optional protocol such as child sex tourism, expressed their reservation to the formulation as proposed by the observer for the Syrian Arab Republic and amended by the representative of Cuba.

51. The representative of the United States of America, supported by the representative of Japan, proposed inserting between "sexual activity, or any" and "representation" the word "illicit". The representative of Chile objected to that proposal.

52. The representative of Japan drew the attention of the working group to the importance for his delegation of limiting child pornography to visual pornography and also requiring that a real child existed. Following a question from the representative of Germany, the view that the expression "depicted as engaged in" as used in the definition was not meant to cover forms of virtual pornography was widely supported. The representative of China expressed his concern, as child pornography was not limited to materials, that the current definition was too narrow and would need further study.

4. Child sex tourism

53. The representative of Italy expressed her satisfaction that a consensus had been reached with regard to the issue of child sex tourism. In informal meetings, it was decided that the international aspects of the practices condemned by the draft optional protocol, such as child sex tourism, would be covered in the definitions of child prostitution and child pornography, the preambular part and the chapter on penalization, pending a final decision on definitions. No agreement was reached on the manner in which this should be done.

54. The representative of Brazil, supported by the observer for the Syrian Arab Republic, requested that the text of the draft definition of child sex tourism as included in the annex to the working group's previous report (E/CN.4/1997/97) be mentioned in the present report pending final approval of the article on definitions. The text read as follows: "Child sex tourism means tourism organized with the intention to facilitate or effect [directly or indirectly] [the sale of children,] [child pornography], child prostitution or [any unlawful sexual practices]".

B. Chapter IV: Penalization of offenders and protection of [children] [child victims]

1. Penalization and prosecution

55. With regard to the first paragraph of the chapter, the observer for Colombia proposed replacing the word "activities" with "acts", since the phrase would otherwise imply that such conduct was punishable only when carried out in a systematic and repeated manner; that would be at variance with legal procedure and prevent an isolated act from being penalized. He further proposed including the words "related criminal acts" in the first clause of the paragraph to make an all-inclusive reference to any acts which mignt contribute to or be intimately connected with the practices condemned in the protocol. He was supported by the representatives of Cuba and China and the observer for Costa Rica; the latter also proposed replacing "activities" with "acts". The representative of China expressed his support for that proposal.

56. The observer for Egypt proposed that related criminal acts should become an aggravating circumstance if they were committed in order to facilitate an offence mentioned in the protocol.

57. The representative of Canada suggested that the optional protocol should use the wording of pertinent international instruments such as articles 4

and 5 of the Convention against Torture. She was supported by the representatives of Argentina, France and Italy and by the observers for Australia and Switzerland.

58. The representative of Argentina, basing himself on the text of a number of international conventions, was of the opinion that the optional protocol should refer to elements of criminalization such as incitement, attempt, participation and attempts to commit offences. His opinion was shared by the representatives of Canada, France, Italy and Uruguay and the observer for Switzerland.

59. The representative of China expressed his concern regarding the words "use of a child" and "knowing facilitation". He felt that would require further consideration and in-depth discussion at future sessions.

60. With regard to paragraph 1 bis, the representative of France and the observers for Australia and Portugal insisted on the importance of maintaining a reference to the liability of legal persons. They proposed keeping this paragraph in the annex of the present report. In that regard, the representative of France suggested that the text could read: "States Parties undertake, insofar as their internal law provides for the criminal liability of legal persons, to prosecute the above-mentioned acts when they are committed by legal persons".

61. With regard to the paragraph dealing with the protection of child victims, the representative of Uruguay, supported by the Islamic Republic of Iran and Italy, expressed her doubts as to whether this paragraph should be included under the section on protection of children. A decision could be taken after having drafted the whole of chapter IV.

62. The representatives of Argentina and Chile agreed that children victims of such practices should be protected and not be held responsible. However, a child who was not the object of exploitation or abuse, but who exploited and abused other children should be treated in consequence, according to the criminal responsibility established by the laws of each State. The representative of Argentina also proposed exempting from penalty parents who sold a child thinking that the child would be treated as an own child with no other illicit purpose, provided they cooperated with the justice system in clarifying the facts of the sale. The observer for Egypt was of the view that this issue should be discussed under the section dealing with protection and not the section on penalization. Mention was made of children who were themselves abusing other children and who should therefore be considered and treated as offenders subject to applicable rules of criminal responsibilities.

63. The observer for the Islamic Republic of Iran stated that it would not be fair to pass judgement on the responsibility of children victims of the practices condemned in the optional protocol unless important elements, inter alia, the culpability of the child victim, the definition of victims and the age of responsibility of a child, were clarified and defined. He also suggested that mention should be made of the legal system of the State.

64. The representative of Italy recalled the commitment made by States at the Stockholm Congress, i.e. not to hold liable children involved in sexual

exploitations who should be considered as the victims of such practices. The representatives of Cuba and Mexico insisted on the importance of adequately protecting children victims and stressed that the guiding principle of the optional protocol should be the best interest of the child. The observer for Australia, supported by the observer for New Zealand, encouraged the working group to continue to work in that direction in order to better protect children victims of sexual exploitation from any penalty for that exploitation. She also proposed replacing the wording "child victim" with the expression "children used in the practices condemned in the present protocol".

65. The representative of Chile proposed deleting the phrase "subject to the legal system of the State". He was supported by the representatives of Canada and Germany and the observers for Australia, Norway and Switzerland.

66. The observers for Egypt, the Islamic Republic of Iran and the Syrian Arab Republic proposed to keep the phrase "subject to the legal system of the State" without square brackets.

67. The representative of Canada and the observer for Switzerland were of the opinion that the word "ensure" should be reconsidered in the context of this paragraph. The observer for Switzerland was of the view that a new, more flexible formulation would permit the deletion of the words "subject to the legal system of the State", which voided the international obligation of all content.

68. With regard to paragraph 2, the observer for the Islamic Republic of Iran expressed his reservation with regard to the possible implications of the implementation of extraterritorial jurisdiction and of "the double criminality rule". He was of the opinion that the matter would need further consideration.

69. With regard to subparagraph (b) of paragraph 2, the representative of the United Kingdom expressed his support for the amendment proposed by the observer for the Netherlands. The amendment, as mentioned in footnote 3 of the annex to the present report, stressed the need to take into account "the double criminality rule". Although his delegation had some concerns with regard to subparagraph (c), he would not oppose a consensus.

70. The representatives of China and France and the observers for the Islamic Republic of Iran, the Syrian Arab Republic and Switzerland objected to the inclusion of "the double criminality rule" in the optional protocol.

71. The representative of China expressed a reservation regarding the amendment made by the observer for Norway, also included in footnote 3 of the annex. He suggested using the wording of article 5 (2) and (3) of the Convention against Torture. This view was supported by the representatives of Cuba and Italy and the observers for the Islamic Republic of Iran and Switzerland. The observer for Australia expressed his support for the inclusion of the wording of article 5 (2) and that further consideration should be given to the wording of article 5 (3).

C. Chapter VI: Prevention, assistance and compensation

72. The Chairman-Rapporteur suggested, for the sake of consistency, to use a standard phrase to refer to "sale of children, child prostitution and child pornography". It should read as follows: "practices condemned in the present protocol". There was general agreement to standardize this terminology. With regard to the three paragraphs contained in chapter VI, the working group considered the following summing-up by the Chairman-Rapporteur:

> (1) States parties shall adopt or strengthen, and implement relevant laws, social policies and programmes, [including those addressing the spiritual and moral needs,] to prevent the practices condemned in the present protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices [, and the international cooperation, whenever required, to prevent them].
>
> (2) States parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of practices condemned in the present protocol, as well as their full social reintegration, and their full physical and psychological recovery [these shall, inter alia, consist of medical, social, [economic] and legal assistance].
>
> (3) States parties shall ensure that all child victims of the practices condemned in the present protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

73. The observer for Colombia expressed concern about the word "implement" in paragraph (1) of the Chairman-Rapporteur's recapitulation as the translation into Spanish might not confer the same meaning. The representative of the Russian Federation preferred keeping the word "implement" between square brackets.

74. The representative of Canada proposed the deletion, in paragraph (1), of the phrase "spiritual and moral needs" which had been proposed by the observer for the Islamic Republic of Iran. This view was supported by the delegations of Australia, Chile, Colombia, France, Germany, the Netherlands, New Zealand, Switzerland and the United States of America.

75. The observer for Nigeria expressed a preference for keeping "spiritual and moral needs". The delegation of the Islamic Republic of Iran stressed the need to keep such a reference, but was ready to accept another wording.

76. The delegation of Canada, supported by Australia, Italy, France, the Netherlands, New Zealand and the United States of America, said that reference to "international cooperation" towards the end of paragraph (1) should be deleted, as it would be considered in chapter V. The Australian delegation added that alternatively, it could remain in square brackets, on the understanding that it would be revisited once chapter V is finalized. The representative of China and the observer for Egypt disagreed and proposed to keep the last part of this paragraph within square brackets. This position

was shared by the delegations of Brazil, Costa Rica, the Russian Federation and Uruguay. The observers for Nigeria and the Syrian Arab Republic proposed to keep this phrase without square brackets.

77. With regard to paragraph (2), the representative of Canada proposed the deletion of the reference to "economic" assistance, because he believed that it was covered by the term "social". This was supported by the delegations of Australia, Chile, France and the Netherlands. Although she would have preferred the word "economic" to be retained, the representative of Cuba, with a view to achieving a consensus, interpreted such assistance as being included within social assistance and accepted that understanding.

78. The representative of China, supported by the observers for Egypt and the Syrian Arab Republic, considered it important to retain the reference to "economic" assistance. The observer for Nigeria proposed the deletion of the square brackets around the word "economic" while the delegation of France preferred to retain them.

79. The representative of Uruguay proposed to use the word "could" instead of "shall" at the end of paragraph (2); her position was shared by the delegation of the United States of America.

80. The Chairman-Rapporteur, along with the delegations of Peru and the Russian Federation, proposed to delete the final sentence of paragraph (2). In opposition to this, the observer for the Islamic Republic of Iran proposed to retain the square brackets around the last sentence.

81. Some delegations then expressed their views on certain specific wordings and a discussion subsequently took place. The representative of China suggested, for the sake of consistency, to use the same wording in the whole paragraph, either "practices" or "offences". The representative of the United States of America stated that his delegation would not object to using those wordings; however, he would prefer to have them within square brackets. His views were supported by the delegations of the Netherlands and New Zealand.

82. Following informal suggestions made by some representatives, the observer for Colombia expressed concern about using the phrase "forms of exploitation", and the representative of Chile was of the same opinion regarding the word "offences". The observer for Argentina suggested to replace "practices" with "offences".

83. With regard to paragraph (3), the representative of Canada proposed replacing "responsible" with "liable" as this would constitute more appropriate legal terminology. This opinion was supported by the delegations of Argentina, Cuba, Egypt, Germany, the Netherlands, Nigeria and the United States of America. The observer for New Zealand preferred to place the word "liable" within square brackets.

84. The representative of Argentina, supported by the delegations of Egypt and Italy, proposed to have the words "without discrimination" follow "to seek compensation". The delegations of the Netherlands and the Russian Federation preferred to see the phrase "without discrimination" either in the preamble or in a separate article.

85. The observer for Colombia felt that reference to the word "damages" was unnecessary, but would rather use the standard phrasing as agreed by the working group. The representative of Chile expressed reservations over the use of the word "damages".

D. Chapter VII: Information, education and participation

86. The Chairman-Rapporteur drew the attention of the working group to two amendments made by the observer for the Islamic Republic of Iran to the relevant paragraph 2/: one proposal was to add after "through information" the words "by all means, including mass media"; the other amendment was to add "preventive measures and" before the words "harmful effects". Those amendments should appear within square brackets.

87. The representative of the Russian Federation suggested adding the following text at the end of the paragraph: "Without prejudice to the freedom of expression, States Parties shall encourage the responsible participation of the mass media in the achievement of the objectives stated above"; this text should be considered at the next session of the working group.

88. If reference was to be made to the mass media in this paragraph, the representative of the United States of America and the observer for New Zealand expressed a willingness to consider the proposal made by the Russian delegation. They felt that the amendments read out by the Chairman and to be included between square brackets were not appropriate. The representative of Uruguay preferred to have a text without square brackets.

89. The representative of China stated that the mass media had an important role to play in the information and education of the public, in particular of children. He was supported by the observers for the Islamic Republic of Iran and the Syrian Arab Republic. The former recalled that his delegation had accepted to eliminate the two paragraphs it had proposed (see E/CN.4/1997/97, annex, chapter VII, "Article A" and "Article B") on the understanding that due mention would be made to the mass media and preventive measures.

90. The observer for the Netherlands proposed moving the paragraph under discussion to chapter VI dealing with prevention, assistance and compensation. The representative of Canada suggested inserting it after paragraph 1. These two proposals were supported by the representatives of France, Italy and the United States of America and the observer for New Zealand. It was therefore decided that the paragraph would become a new paragraph 2 under chapter VI (see the annex of the present report).

91. The observer for the Syrian Arab Republic recalled that her delegation had proposed to include in chapter VII the wording of articles 42 and 45 of the Convention on the Rights of the Child.

92. It was suggested and later decided that the inclusion of a text similar to article 42 would be considered under chapter VIII on other matters, and

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2/ For the "relevant paragraph" as amended see annex, chapter VI, paragraph 2. See also paragraph 90 below.

that the role of specialized agencies and other United Nations organs as referred to in article 45 of the Convention would be considered under chapter V on international cooperation and coordination; these two topics would be discussed at the next session of the working group.

III. DEBATE ON THE WORKING METHODS OF THE WORKING GROUP

93. Many delegations felt the need to discuss working methods adopted by the working group which would permit timely finalization of the optional protocol.

94. During the discussion on chapter II on definitions and chapter IV on penalization, many delegations felt that the chapters should be considered together to ensure harmonization of the provisions.

95. The representative of Germany suggested that delegations should avoid discussing texts which were bracket-free unless individual delegations so wished, and that paragraphs should be declared provisionally "closed" thereby indicating broad agreement. He proposed to have a more flexible list of speakers which would allow for concentration on individual problems of the text. He was supported by the representatives of Canada, the United Kingdom of Great Britain and Northern Ireland and the United States of America and the observer for Australia. He also advocated a more flexible approach to the work. His latter comment was supported by the observer for the Netherlands.

96. The observer for Sweden said that the respect of the rights of the child was a cornerstone of her Government's human rights policy. She welcomed all efforts aiming at ending every form of sexual exploitation of children. In order to make progress on the optional protocol, future negotiations should focus on drafting articles of a concise and practical nature which, according to the Swedish delegation, were outlined at the 1996 Stockholm Congress. The working group should avoid including in the protocol articles that could create confusion with regard to already existing international human rights instruments, in particular the Convention on the Rights of the Child. She agreed with many other delegations that in order to fulfil the mandate of the working group, i.e. to draft an optional protocol before the year 2000, and moreover to have a protocol which States would be able to implement, a more focused and practical approach was required during the deliberations. She supported the need to harmonize chapters II and IV.

97. The observer for New Zealand suggested that the chapters or articles of the draft optional protocol should be put in order and renumbered more logically; she was supported by the representatives of Canada, France and the United Kingdom and the observer for Australia. She was in favour of flexible working methods. Advocating more active participation of NGOs in the discussions, she regretted their absence at the present session. That opinion was shared by the representatives of Canada, France, Italy, the Netherlands, and the United States of America and the observers for Australia, Egypt and the Syrian Arab Republic. In that regard, the observer for the Syrian Arab Republic drew attention to document E/CN.4/1998/WG.14/2 which contained a written contribution to the work of the group submitted by NGOs: they invited the working group to consider the issues of traffic in organs and child sex tourism.

98. The observer for New Zealand recommended that, if appropriate, the Special Rapporteur on the sale of children, child prostitution and child pornography could be asked to make a statement during a formal meeting so that her comments could be reflected in the report of the working group. That opinion was shared by the representative of Canada and the observer for Egypt.

99. In the view of the representative of Brazil, the working methods were not responsible for any progress that had or had not been achieved during the session. He was supported by the representatives of Argentina and Cuba; the latter also added that if progress had not been achieved, it was because some countries wanted to limit the scope of the protocol to sexual exploitation. This opinion was shared by the representative of Argentina. With regard to the text between square brackets, the representative of Brazil recalled that each delegation had the right to discuss any draft provision.

100. The representative of Brazil also noted that until the final adoption of the draft optional protocol as a whole, no section could be considered to be adopted. In that regard, he was supported by the representatives of Chile, Cuba and the observers for Australia, Egypt and the Syrian Arab Republic.

101. According to the representative of the United States, despite the progress achieved at the last four sessions, various key issues remained unsolved, such as the scope of the future optional protocol and the definitions. Informal meetings should be used for such discussions.

102. The representative of Cuba was in favour of harmonizing chapters II and IV, but recalled that no agreement had been reached on the way in which such harmonization would be achieved. The Commission on Human Rights should clearly establish the mandate of the working group. States parties to the Convention on the Rights of the Child had an important role to play in the implementation of that instrument in their national legislation and in the drafting of the optional protocol which should strengthen existing standards.

103. The representative of Canada suggested that the working group should adopt a work programme at the beginning of its next session which would allow enough time to consider the different chapters.

104. The observer for the Netherlands expressed her disappointment as to the lack of progress in the discussion; she recalled her submission of an alternative proposal for a definition of sale of children, child prostitution and child pornography designed to overcome existing opposition. The representative of the United Kingdom shared her disappointment.

105. The delegates of Colombia, Costa Rica and Cuba expressed their satisfaction with the working methods of the Chairman.

106. The representative of the Russian Federation stated that his delegation would prefer to adopt an additional protocol to the Convention on the Rights of the Child rather than an optional protocol. The future protocol should strengthen existing principles contained in articles 34 and 35 of the Convention, and should therefore be an additional instrument to the

Convention. The Commission on Human Rights should take a decision in that regard. The representative of Italy felt that such a proposal should be considered with interest.

107. The observer for Egypt suggested that at the end of each session the Chairman-Rapporteur should make a general assessment of the work of the working group giving a global picture of the progress made and the remaining problems; this assessment should be included in the report of the group.

108. The Chairman-Rapporteur recalled that it was not within the working group's purview to discuss its mandate, but that a debate was going on with regard to the definition of the sale of children. At earlier sessions, he had proposed to work in very informal drafting groups but that approach did not meet with the full agreement of many delegations, including those who were now advocating such a method. He was, therefore, supportive of a flexible method of work. The working group had saved time at the present session by avoiding a general debate. He hoped that the group could concentrate on the problematic issues between square brackets on the understanding that the parts without square brackets reflected a fragile consensus. He added that any delegation had the right to reconsider them if it was deemed necessary. Non-governmental organizations should participate more actively in the work of the group. As expressed by all delegations, chapters II and IV should be harmonized; however, the way in which such harmonization should be accomplished had not yet been decided. The Chairman-Rapporteur supported the Canadian proposal to adopt a programme of work at the beginning of each session. The proposal made by the Russian Federation should be considered with attention. With regard to the suggestion made by the observer for Egypt, he recalled that when presenting the report of the working group to the Commission on Human Rights, the Chairman-Rapporteur makes an assessment of the work of the group; it was therefore not the task of the working group to include such an assessment in its report.

Annex

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Part 1. Texts resulting from the debates held by the working group at its fourth session

The following texts reflect the outcome of negotiations in the working group at its fourth session.

CHAPTER II. DEFINITIONS 1/ 2/

Sale of children

[Sale of children means any kind of transaction or illicit transfer, [including abduction, kidnapping, stealing, trafficking of children for the purpose of such transaction,] where the child is the object [and any part of the body of a child], regardless of the form it takes and any remuneration for it, for whatever purpose.]

OR

[Sale of children means any kind of buying and selling of a child between any person having custody or control over the child and any other person for any form of compensation or benefit with a view to the sexual exploitation of the child.]

Child prostitution

Child prostitution means the act of obtaining, [inducing, coercing,] procuring [or facilitating] the [unlawful] sexual [services] [activities] of a child for any form of consideration or benefit, [by a person, whether inside or outside that person's country of residence], [including in the context of child sex tourism].

Child pornography

Child pornography means the commercialization/trading or dissemination, or the production or possession [for the purposes of commercialization/ trading, dissemination or other illicit purpose] of any materials that constitute a representation of a child engaged in or depicted as engaged in [or used] in [explicit] sexual activity or any [illicit] representation of the

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1/ The Working Group decided to use the phrase "practices condemned in the present protocol" to refer to matters considered in the draft optional protocol with respect to the sale of children, child prostitution, child pornography and child sex tourism, pending the result of the negotiations on the subject of definitions.

2/ If no agreement were to be reached on the proposed definitions, there is the Netherlands proposal, included in this annex as article 1.

body or part of the body of a child, the dominant characteristic of which is the depiction for a sexual purpose, [inter alia, encouraging child prostitution and child pornography, including in the context of child sex tourism].

The Netherlands proposal on definitions reads as follows:

[Article 1

1. For the purposes of this Protocol, States Parties shall define, in their legislation, sale of children, child prostitution, child pornography and [child sex tourism], in accordance with the objectives [of articles 34 and 35] of the Convention on the Rights of the Child and the present Protocol.

2. States Parties may in their definitions derogate from the majority age otherwise contained in their legislation.]

CHAPTER IV. PENALIZATION OF OFFENDERS AND PROTECTION OF [CHILDREN] [CHILD VICTIMS]

Penalization and prosecution

1. Each State Party shall ensure that [the use of a child in] acts referred to in (Chapter II or article...) [and connected [criminal] acts] are offences under its criminal law and shall make these offences punishable by appropriate penalties which take into account their grave nature. The same shall apply to an attempt to commit any of these offences and to an act by any person which constitutes participation in [or knowing facilitation] of such offences.

[1 bis. A corporation or any other legal person can be prosecuted consistent with the legal system of a State.]

Consideration will be given to moving the following text to the section of chapter IV dealing with protection of children/child victims:

(a) [States parties shall ensure that children who are victims of the practices condemned in the present protocol are not punished for these offences, [subject to the legal system of the State]]

2. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) 3/ When the alleged offender is a national of that State;

3/ The Dutch delegation proposed to insert at the end of that sentence the following wording: "taking into account the double criminality rule where appropriate;". The Norwegian delegation proposed to draft the subparagraph as follows: "(b) Outside the territory, when the alleged offender is a national of that State or a person domiciled in that State;"

(c) When the victim is a national of that State if that State considers it appropriate (article 5.1 of the Convention against Torture).

CHAPTER VI: PREVENTION, ASSISTANCE AND COMPENSATION

1. States Parties shall adopt or strengthen, and implement [and publicize] relevant laws, social policies and programmes, [including those addressing the spiritual and moral needs] to prevent the practices condemned in the present protocol. Particular attention shall be given to protect children who are specially vulnerable to these practices [,and to international cooperation whenever required to prevent them].

2. States Parties shall promote awareness in the public at large, including children, through information [by all means including mass media] and education about the [preventive measures and] harmful effects of the practices condemned in the present protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and in particular, children and child victims, in such information and education programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of practices condemned in the present protocol, as well as their full social reintegration, and their full physical and psychological recovery. [These shall [could], inter alia, consist of medical, social [economic] and legal assistance.]

4. States Parties shall ensure that all child victims of the practices condemned in the present protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

Part 2. Texts left from the previous session for consideration by the working group at its next session

CHAPTER IV. PENALIZATION OF OFFENDERS AND PROTECTION OF [CHILDREN] [CHILD VICTIMS]

Penalization and prosecution

[3. States Parties shall undertake measures and adopt such legislation as necessary aimed at prohibiting the production of, access to and dissemination of material containing, promoting and encouraging the sale of children, child prostitution and child pornography [through various means including electronic media and modern telecommunication facilities].]

Extradition

4. The offences referred to in article ... shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties, and shall be included as extraditable in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in these treaties.

If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 2 (article 8 of the Convention against Torture).

5. If an extradition request is made with respect to an offence described in the first chapter and if the requested State does not or will not extradite [its nationals] the requested State [of the national] shall take suitable measures to submit the case to its authorities with a view to determining whether sufficient grounds exist to prosecute [taking into account the double criminality rule].

Mutual judicial assistance

[States Parties shall afford one another the greatest measure of assistance in connection with [criminal] proceedings brought in respect of any of the offences referred to in article ..., including the supply of all evidence at their disposal necessary for the proceedings.]

States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them (article 9, paragraphs 1 and 2, of the Convention against Torture).

Seizure and confiscation

6. States Parties shall take all necessary and appropriate measures [for investigation and prosecution] to allow the seizure and confiscation [from persons convicted] [from the offenders] of the gains from the offences described in article ... [specifically funds, property, equipment and other assets used by those persons to commit or promote the commission of those offences] consistent with due process and other applicable laws.

Protection of [children] [child victims]

2. States Parties shall adopt all appropriate measures to protect the interests of child victims of the sale of children, child prostitution, child pornography and child sex tourism throughout the criminal proceedings, in particular by:

(a) Protecting the right to privacy of these victims, in particular by ensuring the [non-] [availability of measures to avoid] dissemination of information that could lead to the identification of such child victims;

(b) Facilitating the testimony of these victims through appropriate measures [and ensuring that these victims are not further victimized by these proceedings];

(c) Ensuring that the views or concerns of these victims shall be brought to the attention of the court, where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

[(d) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(e) Providing proper assistance to child victims throughout the legal process;

(f) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.]

4. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations including investigations aimed at establishing the age of the victim.

6. States Parties shall adopt measures in order to protect the safety and integrity of those persons and/or institutions involved in the prevention and/or protection and rehabilitation of child victims of these practices.

CHAPTER V. INTERNATIONAL COOPERATION AND COORDINATION

Article A

States Parties shall take all necessary steps to strengthen international cooperation by all appropriate means, including bilateral, multilateral and regional arrangements for the prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.

Article C

States Parties shall promote cooperation between their authorities and [relevant] [national and international non-governmental organizations] and international organizations with a view to the implementation of the purposes of the present Protocol.

[Article E

States Parties shall, through bilateral and multilateral cooperation, undertake to take such measures as are deemed effective [in eliminating the

consumer market that nurtures] [in order to fight] [the increase in] the sale of children, child prostitution, child pornography [and child sex tourism] [on the basis of the principle of collective responsibility].]

Article F

[States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the practices of sale, prostitution, pornography and child sex tourism.]

Article G

States Parties shall ensure the implementation and strengthening of measures against the practices referred to in the present Protocol, including the protection against cross-border trafficking, and providing special arrangements for the assistance, repatriation and reintegration of child victims, when appropriate.

[Article H

States Parties shall ensure international cooperation to assist children especially from developing countries for their repatriation and reintegration, in particular by providing financial aid.]

PREAMBLE (FORMER CHAPTER III. IMPLEMENTATION OF PERTINENT INSTRUMENTS)

Proposal submitted by the delegation of the United States of America acting as coordinator

Emphasizing the importance of preventing and eradicating the sale of children, child pornography and child prostitution through effective national legislation and domestic measures, including measures aimed at minimizing access to and dissemination of materials promoting the sale of children, child pornography and child prostitution, through written, visual, or modern telecommunication and electronic media,

Stressing the continuing need for effective implementation by States of relevant international legal instruments relating to the sale of children, child prostitution and child pornography, including the Convention on the Rights of the Child and all other relevant treaties and conventions to which they are party,

Giving due regard to the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the other relevant decisions and recommendations of pertinent international bodies,

Encouraging appropriate activities of, and cooperation with, relevant international and non-governmental organizations, with respect to the sale of children, child pornography and child prostitution, in line with their respective national legislation,

Recalling that in the Convention on the Rights of the Child, States Parties undertook to protect the child from all forms of sexual exploitation and sexual abuse,

Bearing in mind that the majority of the child victims in the sale of children, child prostitution and child pornography are from developing countries,

Believing that the elimination of the consumer market will effectively reduce the sale of children, child prostitution and child pornography,

Recognizing that while poverty or underdevelopment create an environment which may lead to child exploitation, the sale of children, child prostitution and child pornography cannot under any circumstances be justified by reason of such poverty or underdevelopment,

Recognizing the need to address the root causes contributing to the vulnerability of the child to sale of children, child prostitution and child pornography, including poverty and underdevelopment,

Deeply concerned at the widespread and continuing practice of sex tourism to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing the transborder nature of prevailing practices that promote the commercial sexual exploitation of children,

Emphasizing in this regard the importance of establishing effective international cooperation, including bilateral, multilateral and regional arrangements, providing for penalization, prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution and child pornography,

Emphasizing that nothing in this Protocol prejudices the legitimate adoption of children consistent with the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally,

Recognizing that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Proposal submitted by Denmark

Keeping in mind that any person regarding whom proceedings are brought in connection with any of the offences referred to above should be guaranteed fair treatment at all stages of the proceedings (article 7, paragraph 3 of the Convention against Torture).

Proposal submitted by the delegation of Australia acting as a coordinator for Chapter V

Encouraging States Parties to work to ensure cooperation between their appropriate officials in tracing and apprehending and prosecuting those responsible for acts involving the sale of children, child prostitution and child pornography, and in investigating such acts, and to work with relevant non-governmental and international organizations to assist with the identification of offenders, bearing in mind the need to protect the privacy of all involved,

Encouraging States Parties also to take all reasonable steps to put in place effective bilateral, multilateral or regional arrangements for cooperation in the prevention, detection, prosecution and punishment of acts of tourism organized with the purpose of facilitating the effecting of a commercial sexual relationship with a child,

Considering that States Parties should strengthen cooperation in providing assistance, rehabilitation and repatriation where this is appropriate to child victims of sale, prostitution and pornography,

Considering also that States Parties should take all feasible measures, through bilateral and multilateral cooperation and on the basis of collective responsibility, to eliminate the sale of children, child prostitution and child pornography,

Encouraging States Parties to promote and strengthen international cooperation in the elimination of poverty, hunger and underdevelopment, all of which create an environment which may lead to the exploitation of children, particularly in developing countries, with a view to contributing to the elimination of sale of children, child prostitution and child pornography.

CHAPTER VIII. OTHER MATTERS

Proposal submitted by the Islamic Republic of Iran on the structure of the protocol

The following issues would be placed under chapter I entitled "General provisions":

A. Definitions

As adopted by the working group

B. An independent article

Nothing in this Protocol shall be interpreted in a manner to affect the right of each State to take any appropriate measures aimed at combating sale of children, child prostitution and child pornography.

C. Non-discrimination (as contained in document E/CN.4/1995/95, annex I)

The provisions of a possible optional protocol should be implemented without discrimination of any kind as set forth in article 2 of the Convention on the Rights of the Child.

D. Reservations (as contained in document E/CN.4/1995/95, annex I)

A possible optional protocol should consider the question of reservations.

E. Reporting (as contained in document E/CN.4/1995/95, annex I)

A possible optional protocol should contain a provision relating to the inclusion of information regarding the implementation of the protocol in the regular reports submitted by States who are party to the Optional Protocol to the Committee on the Rights of the Child, pursuant to article 44 of the Convention on the Rights of the Child.